IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4543 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT AGRICULTURAL UNIVERSITY - Petitioner(s)
Versus
DIVALIBEN PREMJIBHAI - Respondent(s)

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Appearance :
MR DG CHAUHAN for Petitioner(s) : 1,
MR KD VASAVADA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 26/07/2007

ORAL JUDGMENT

Shri D.G. Chauhan, learned counsel for the petitioner; Shri K.D. Vasavada, learned counsel

for the respondent.

2. The petitioner establishment, being aggrieved by the award dated 20.6.2000 passed by the Labour Court, Rajkot in Reference [LCR] No. 809/88 [New Number - Reference [LCJ] No. 1112 of 1990], is before this Court with a submission that the award is bad, is contrary to law and therefore, the same deserves to be set aside.

3. The short facts necessary for disposal of the present writ application are that the respondent workman came to the Labour Court with a submission that she had worked with the department for almost about ten years and was being paid Rs.11/- per day but abruptly she was discontinued from 31.1.87 and her discontinuance amounted to illegal retrenchment, she was entitled to reinstatement with back wages. The present petitioner establishment appeared and submitted that the workman was not discontinued but she had abandoned the work of her own with effect from 31.10.87. They also submitted that on two different occasions, letters were sent to her but despite service of

letters, she did not come to join the services. They submitted that the Reference deserved to be rejected. The learned Labour Court, after recording evidence and hearing the parties, came to a conclusion that the first letter asking the respondent workman to join or report on duty was issued almost after six months from the date of her alleged retrenchment. The Court also observed that this amounted to rectification of mistake on the part of the present petitioner. The Court below also observed that there was nothing on the records to prove that such registered letters were served upon the respondent workman. The Court found that one of the letters was not claimed and for the other, there was nothing on the records to show or suggest that it was served upon her. The Court below accordingly directed reinstatement with 30% back wages and also directed that benefit of continuity in service with consequential benefits be also given to her.

4. Shri D.G. Chauhan, learned counsel for the petitioner submits that the evidence available

on the records would show that the workman left the work of her own and despite letters from the petitioner, did not care to report on duty. He also submitted that there is a presumption in favour of the service if the letter is registered letter. He also submitted that the Court below was unjustified in awarding 30% back wages and giving benefit of continuity in service and consequential benefits.

5. Shri K.D. Vasavada, learned counsel for the respondent, on the other hand, submitted that the findings recorded by the learned Court below are based on appreciation of evidence, therefore, the same need not be interfered with. He also submitted that as the respondent was permanent employee, the Court below was justified in giving benefit of continuity of service and consequential benefits. He also submitted that the Court below did not commit any wrong in awarding 30% back wages if the findings were that the respondent was illegally retrenched.

6. So far as the findings relating to illegal

retrenchment and removal from services are concerned, the same are based on due appreciation of evidence on the records. True it is that certain letters were sent to the respondent but one of the letters remained unclaimed and for the other letter there is no proof that it was served upon the workman. The petitioner has not come with any explanation that if the respondent workman had abandoned the work, then, why immediate action was not taken or why they waited for six months in sending the letter to the respondent. The Court below, after appreciating the facts, in the opinion of this Court has recorded correct findings. Being in general agreement with the findings recorded by the Court below, I hold that the respondent was illegally retrenched from services.

7. So far as the benefit of continuity of service and consequential benefits are concerned, though Shri Vasavada repeatedly stated that the respondent was permanent employee but was unable to read anything from her statement or from the pleadings. It appears that the learned counsel

was mixing the issue of character of employment and effect of continuous service as provided under Section 25-B of the Act. The respondent did work for 240 or more days, therefore, was entitled for reinstatement but in the opinion of this Court, as she has failed in proving that she was permanent employee, she would not be entitled to the benefit of continuity of service. In the statement on oath, she had clearly stated that she was a daily wager and for the work done, she was being paid at the rate of Rs. 11/- per day. The said part of the award giving her benefit of continuity of service and other consequential benefits, deserves to and is accordingly quashed. It would be trite to observe that daily wager, temporary employee or ad-hoc employee, if is directed to be reinstated, then, he would be reinstated on the post held by him and no further orders can be granted in favour of such person.

8. So far as the award of back wages is concerned, once the Court finds that removal amounted to

illegal retrenchment, then, such workman would be entitled to back wages if the workman proved that he was not gainfully employed or the establishment proves that he was gainfully employed. In the present case, in reply to the question put in the cross-examination, the respondent workman had clearly stated that she did not make any attempt to secure any job anywhere. If that was the answer to the question put to her in the cross-examination, then, the petitioner cannot be allowed to say that as she had not stated anything in the examination-in-chief, she would not be entitled to any benefits. A statement of a person is to be read as a whole. A statement would contain examination-in-chief, cross-examination, re-examination, if any, and further cross-examination. One cannot take few lines from the examination–in-chief and ignore the other part. If submission of Shri Chauhan is to be accepted, then, the Court would be entitled to read the examination-in-chief only and ignore what has come in the cross-examination or read the cross-

examination and ignore the examination-in-chief.

9. Taking into consideration the circumstances of the case, I am unable to hold that the learned Court below was unjustified in awarding 30% back wages. The petition to the extent indicated above is allowed. Rule is made absolute accordingly. No costs.

[R.S. GARG, J.]

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